

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES

v.

11-CR-00006-001-JL

BRIAN MAHONEY

DEFENDANT'S MOTION TO EXCEED CJA FEE CAP  
BY AN ADDITIONAL \$2,685.30 FOR SUPPLEMENTAL REPRESENTATION

Counsel for defendant Brian Mahoney moves this court, pursuant to 18 U.S.C. §3006A(d)(3), to exceed the CJA fee cap by an additional \$2,685.30 for supplemental services provided by counsel following this court's order finding the defendant incompetent and non-restorable.

In support of this motion, counsel states as follows:

I. Background

1. Defendant Brian Mahoney was accused of failing to register as a sex offender after traveling in interstate commerce in violation of 18 U.S.C. §2250.

2. The case required both extended and complex representation because (a) there were significant, non-routine legal issues that were briefed and argued in the context of a motion to dismiss, (b) there were extensive proceedings related to the defendant's mental state, competency and status of counsel and (c) the defendant raised numerous legal issues *pro se* that required responses from counsel.

3. On June 12, 2012, defendant Mahoney was found incompetent to stand trial. See, Docket Document No. 107).

4. On February 21, 2013, this court found that Mahoney could not be restored to competency. See, Docket Document No. 150. Mahoney was then committed for the purpose of a risk assessment and possible civil commitment.

5. Shortly thereafter, undersigned counsel filed a CJA Voucher and a motion to exceed the CJA case maximum. Both this court and the First Circuit approved a total fee of \$13,171.93.

6. At the time, undersigned counsel believed that no further services would be needed or, at the very least that any additional work would be so minor that a supplemental voucher would not be necessary. This was so because a civil commitment proceeding would be brought in the District of Massachusetts and new counsel would then appointed.

## II. Supplemental Services

7. Mahoney remained in a prison setting at FMC Devens for five months while the government completed its risk assessment and filed a petition for a civil commitment. During this lengthy period of time, Mahoney continued to file motions and pleadings in this court and the First Circuit. He wrote, with great regularity to both the U.S. Attorney's Office and undersigned counsel. This required continued and frequent client contact by phone and letter.

8. Even after the civil commitment proceeding was filed, Mahoney continued to file motions in this court. In particular, he filed a *pro se* motion for discharge. That motion was denied, in part, because it was not filed by counsel. Because this motion had potential merit, undersigned counsel researched the law and re-filed the motion. Additionally, undersigned counsel filed a motion for a fresh determination of competency and for appointment of an expert.

9. The government responded to these motions by voluntarily dismissing the indictment without prejudice.

10. In the course of representing Mahoney after he was found to be incompetent and non-restorable, undersigned counsel (a) had significant interactions with the attorneys who were (serially) appointed to represent Mahoney in the related civil commitment proceeding, (b) visited Mr. Mahoney on one occasion at FMC Devens and otherwise communicated with him by phone and email, (c) conducted legal research, (d) drafted motions, (e) reviewed all of the filings in the civil commitment case and (f) had continuing interactions with the U.S. Attorneys' Office.

11. Counsel worked an additional 23.5 hours and incurred \$56 in travel costs. Counsel has submitted a supplemental CJA Voucher for \$2,685.30

WHEREFORE, counsel requests this court to exceed the CJA fee cap by an additional \$2,685.30.

Respectfully Submitted,

July 3, 2014

/s/Andrew R. Schulman  
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CERTIFICATE OF SERVICE

I certify that the foregoing has been served on all counsel of record via the court's ECF facilities on July 3, 2014.

/s/Andrew R. Schulman